

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

CENTER CAPITAL CORPORATION,	)	
	)	C.A. No: 08-508
Plaintiff,	)	
	)	
v.	)	
	)	
JR LEAR 60-099, LLC, J.B. HUNT, LLC,	)	
PINNACLE AIR, LLC, JET RIDE, INC.,	)	
ROBERT B. THORNTON, and	)	
BILL W. SCHWYHART,	)	
	)	
Defendants.	)	

**MOTION FOR ORDER OF REPLEVIN**

NOW COMES CENTER CAPITAL CORPORATION ("CENTER CAPITAL"), by and through its attorneys, and for its Motion for Order of Replevin against Defendants JR LEAR 60-099, LLC, J.B. HUNT, LLC, PINNACLE AIR, LLC, JET RIDE, INC., ROBERT B. THORNTON, and BILL W. SCHWYHART (collectively the "Defendants"), and in support thereof, states as follows:

**STATUTORY PREDICATES**

1. CENTER CAPITAL proceeds with this Motion pursuant to Federal Rule of Civil Procedure 64 which provides that CENTER CAPITAL may seek entry of an order of replevin in this proceeding and pursuant to 6 Del. C. § 9-609.
2. This Motion for Order of Replevin is supported by the Verification of Craig Enright, Vice President, Asset Management of Center Capital Corporation. A true and correct copy is attached hereto as Exhibit 1 and was attached to the Complaint.
3. Center Capital, as assignee of Key Aircraft Finance, Inc., and JR Lear entered into the following contractual documents for the purchase of a certain aircraft:

- Aircraft Security Agreement dated September 26, 2006  
*See Exhibit A*
- Schedule 1 to Aircraft Security Agreement  
*See Exhibit B*
- Exhibit A to Aircraft Security Agreement Financial Covenants  
*See Exhibit C*
- Exhibit B to Aircraft Security Agreement Form Irrevocable De-Registration and Export Request Authorization  
*See Exhibit D*
- Exhibit C to Aircraft Security Agreement- Condition of Aircraft  
*See Exhibit E*
- Certificate of Authority  
*See Exhibit F*
- Certificate of Authorized Representative  
*See Exhibit G*
- Promissory Note  
*See Exhibit H*
- Borrower Acknowledgement Certificate of Acceptance  
*See Exhibit I*

The foregoing exhibits are made a part hereof for all purposes as if set out herein verbatim (collectively "Aviation Security Agreement").

4. The aircraft financed by Center Capital through the Aviation Security Agreement is set forth and further described in the Schedule 1 to the Aircraft Security Agreement as follows:

Airframe Make and Model: Learjet, Inc., Model 60  
United States Registration Number: N60AN  
Airframe Manufacturer's Serial Number: 099  
Engine Make and Model: Pratt & Whitney of Canada, Model 305A  
Engine Manufacturers' Serial Numbers: PCE-CA0028 and PCE-CA0032

(hereinafter the "Aircraft"). *See* Schedule 1 to Aircraft Security Agreement attached to the Complaint as Exhibit B

5. Center Capital has a perfected first priority purchase money security interest in the Aircraft. *See* Aircraft Lien Registration Documents attached to the Complaint as Exhibit J.

6. Center Capital is the assignee of Key Aircraft Finance, Inc., pursuant to Master Assignment Agreement. *See* Master Assignment Agreement attached hereto as Exhibit K.

7. Defendants, JR Lear, J.B. Hunt, Thornton and Schwyhart accepted and agreed to the Master Assignment Agreement. *See* November 29, 2006, Letter of Notice and Acknowledgement of Assignment of Aircraft Security Agreement attached to the Complaint as Exhibit L.

8. Defendants are in default under the terms of the Aviation Security Agreement due to the failure to make the payment due July 1, 2008, in the amount of \$53,632.45 and all subsequent payments and as a result the Aviation Security Agreement was accelerated and the principal remaining balance due and owing as of the acceleration date of July 24, 2008 was \$5,410,890.24, late charges in the amount of \$4,492.75, plus prejudgment interest at per diem rate of \$2,705.45 subsequent to July 24, 2008. *See* Verification of Mr. Craig Enright, Vice-President, Asset Management, CENTER CAPITAL.

9. The Aircraft is highly mobile and at risk of destruction. *See* Verification of Mr. Craig Enright, Vice-President, Asset Management, CENTER CAPITAL.

10. The location of the Aircraft is unknown.

### **ARGUMENT**

11. Under Delaware law, a plaintiff is entitled to a replevin order if it established that: (1) it is lawfully entitled to the possession of the collateral; (2) the defendant is wrongfully detaining the collateral; (3) it had made upon the defendant for the return of the collateral; and (4) the collateral has not been taken for any tax, assessment, or fine levied by virtue of any law

of the State of Delaware, against the property of plaintiff, nor seized under any lawful process against the goods and chattels of the plaintiff subject to such lawful process, nor held by virtue of any order for replevin against such plaintiff.

12. As set forth in Craig Enright's Verification, by virtue of the Aviation Security Agreement, Uniform Commercial Code Financing Statements and the FAA Title Search attached to the Complaint and hereto, CENTER CAPITAL has a perfected first priority security interest in the Aircraft.

13. Defendants have defaulted under the Aviation Security Agreement and have refused CENTER CAPITAL's lawful demand for surrender of the Aircraft.

14. CENTER CAPITAL has made demand on the Defendants for the surrender and return of the Aircraft but the Defendant has failed and refused to surrender and return the Aircraft to CENTER CAPITAL.

15. The Aircraft has not been taken for any tax, assessment, or fine levied by virtue of any law of the State of Delaware, against the property of plaintiff, nor seized under any lawful process against the goods and chattels of the plaintiff subject to such lawful process, nor held by virtue of any order for replevin against such plaintiff.

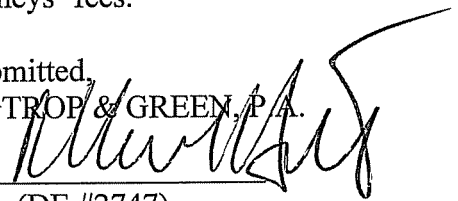
16. CENTER CAPITAL has satisfied each and every requirement for the entry of an Order of Replevin in its favor and against Defendants.

WHEREFORE, CENTER CAPITAL respectfully requests that the Court issue a writ of replevin possession and foreclosure jointly and severally against Defendants JR LEAR 60-099, LLC, J.B. HUNT, LLC, PINNACLE AIR, LLC, JET RIDE, INC., ROBERT B. THORNTON, and BILL W. SCHWYHART directing said defendants to turn over possession of the Aircraft identified herein to a designated representative of Center Capital immediately but no later than

twenty-four (24) hours of the date of this Court's Order in good air worthy condition and issue a writ of replevin ordering the United States Marshall or the sheriff of any district or county where the Aircraft can be found and to use all reasonable and necessary force to obtain possession of the Aircraft and in the event that the Aircraft cannot be located, require the individual defendants and designated corporate representatives of the corporate defendants to appear before this Court to answer for the Aircraft's whereabouts and if the Aircraft is not returned, enter judgment in favor of Center Capital and against Defendants JR LEAR 60-099, LLC, J.B. HUNT, LLC, ROBERT B. THORNTON, and BILL W. SCHWYHART, jointly and severally, for the fair market value of the Aircraft not returned plus interest, costs and attorneys' fees.

Dated: August 12, 2008

Respectfully Submitted,  
SEITZ VAN OGTRUP & GREEN, P.A.

/s/ R. Karl Hill 

R. Karl Hill, Esq. (DE #2747)

Kevin A. Guerke, Esq. (DE #4096)

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Chicago, Illinois 60602

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*Attorneys for Center Capital Corporation*

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

CENTER CAPITAL CORPORATION,

Plaintiff,

V.

JR LEAR 60-099, LLC, J.B. HUNT, LLC,  
PINNACLE AIR, LLC, JET RIDE, INC.,  
ROBERT B. THORNTON, and  
BILL W. SCHWYHART,

Defendants.

C.A. No: 08-508

## WRIT OF REPLEVIN

To the Marshall of the United States:

YOU ARE HEREBY ORDERED TO:

Take the specified property of the Defendants Jr. Lear 60-699 LLC, J.B. Hunt, LLC, Pinnacle Air, LLC, Jet Ride, Inc., Robert B. Thornton and Bill W. Schwyhart that may be found in your district and described as follows:

The Aircraft identified in Exhibit 1 attached hereto; and deliver the same to the Plaintiff, CENTER CAPITAL unless such Defendants execute a bond and security in double the value of the property described herein in which case you shall return said bond so taken, together with this order to the Clerk of the Court, and that you summon said Defendants to answer the Complaint of the Plaintiff in this cause by filing an answer or appearance with the clerk of the court at US District Court for the District of Delaware, 844 North King Street, Room 4209, Wilmington, Delaware 19801 on or before \_\_\_\_\_ or in case the property or any part thereof is not found to answer the Plaintiff for the value of the same.

Date \_\_\_\_\_

United States District Court Judge

**EXHIBIT 1 TO THE WRIT OF REPLEVIN**

Airframe Make and Model	Learjet, Inc. Model 60	
United States Registration Model	N60AN	
Airframe Manufacturer's Serial Number	099	
Engine Make and Model	Pratt & Whitney of Canada Model 305A	
Engine Manufacturer's Serial Numbers	PCE-CA0028 & PCE-CA0032	
Avionics	VHF COMM	DUAL VHR-422
	VHF NAV	DUAL VIR-432
	F/D SYS	AMS-850
	A/P	AMS-850
	TRANSPONDERS	DUAL TDR-94D
	ADF	DUAL ADF462
	FMS	DUAL FMS-850
	GPS	GPS 4000
	HF	KHF-950
	DME	DUAL DME-422
	EFIS	PROLINE 4
	RADAR	RTA-844
	RAD ALT	SINGLE ALT-55B
	TCAS	TIR-920
	TAWS	KGP-860 CLASS B
	CVR	CVR-30A
	FDR	N/A

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PINNACLE AIR, LLC, JET RIDE, INC.,	)	
ROBERT B. THORNTON, and	)	
BILL W. SCHWYHART,	)	
	)	
Defendants.	)	

**ORDER OF REPLEVIN**

Coming before this Court on CENTER CAPITAL CORPORATION'S ("CENTER CAPTIAL") Motion for Order of Replevin (the "Motion"), all interested parties having received due and proper notice of the Motion, the Court upon due consideration of the pleadings and related affidavits and arguments of counsel, finds that CENTER CAPITAL is entitle to the relief requested on this Motion, therefore:

IT IS HEREBY ORDERED THAT:

Order of Replevin is hereby entered in favor of CENTER CAPITAL and against Defendants JR LEAR 60-099, LLC, J.B. HUNT, LLC, PINNACLE AIR, LLC, JET RIDE, INC., ROBERT B. THORNTON, and BILL W. SCHWYHART directing said defendants to turn over possession of the Aircraft identified in Exhibit 1 attached hereto to a designated representative of Center Capital immediately but no later than twenty-four (24) hours of the date of this Court's Order in good air worthy condition and issue a writ of replevin ordering the United States Marshall or the sheriff of any district or county where the Aircraft can be found and to use all reasonable and necessary force to obtain possession of the Aircraft and in the event that the



Aircraft cannot be located, require the individual defendants and designated corporate representatives of the corporate defendants to appear before this Court to Answer for the Aircraft's whereabouts and if the Aircraft is not returned, enter judgment in favor of Center Capital and against Defendants JR LEAR 60-099, LLC, J.B. HUNT, LLC, ROBERT B. THORNTON, and BILL W. SCHWYHART jointly and severally for the fair market value of the Aircraft not returned plus interest, costs and attorneys' fees.

ENTERED \_\_\_\_\_

\_\_\_\_\_  
United States District Court Judge

**EXHIBIT 1 TO THE ORDER OF REPLEVIN**

Airframe Make and Model	Learjet, Inc. Model 60	
United States Registration Model	N60AN	
Airframe Manufacturer's Serial Number	099	
Engine Make and Model	Pratt & Whitney of Canada Model 305A	
Engine Manufacturer's Serial Numbers	PCE-CA0028 & PCE-CA0032	
Avionics	VHF COMM	DUAL VHR-422
	VHF NAV	DUAL VIR-432
	F/D SYS	AMS-850
	A/P	AMS-850
	TRANSPONDERS	DUAL TDR-94D
	ADF	DUAL ADF462
	FMS	DUAL FMS-850
	GPS	GPS 4000
	HF	KHF-950
	DME	DUAL DME-422
	EFIS	PROLINE 4
	RADAR	RTA-844
	RAD ALT	SINGLE ALT-55B
	TCAS	TIR-920
	TAWS	KGP-860 CLASS B
	CVR	CVR-30A
	FDR	N/A

**CERTIFICATE OF SERVICE**

I, *R. Karl Hill, Esquire*, hereby certify that on this 12<sup>th</sup> day of August 2008, the following *Notice of Motion, Motion for Replevin with attached Orders* was served via Hand Delivery and First Class Mail on the following:

JR Lear, LLC  
c/o Registered Agent  
Corporate Service Company  
2711 Centerville Road  
Suite 400  
Wilmington, DE 19808

and

Pinnacle Air, LLC  
c/o Registered Agent  
Corporate Service Company  
2711 Centerville Road  
Suite 400  
Wilmington, DE 19808

  
/s/ R. Karl Hill

R. Karl Hill, Esquire (DE# 2747)